

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILLIP PERDUE	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO. 20-3422

MEMORANDUM

Bartle, J.

December 22, 2020

Plaintiff Phillip Perdue brings suit against the following defendants under 42 U.S.C. § 1983: the City of Philadelphia; Blanche Carney; Michelle Farrell; Siddharth Sagreiya, M.D.; Susamma Varghese, R.N.; Constance Ori Chisom, C.R.O.; Bang Quang, R.N.; Sigy George, C.R.N.P.; L. Jenes; the Montgomery County Department of Corrections; Julio A. Algarin; Corporal Baker; Corrections Officer Colbreath; and the Delaware County Department of Corrections.<sup>1</sup> Plaintiff claims that defendants violated his constitutional rights under the Eighth and Fourteenth Amendments with respect to his medical care while he was a pre-trial detainee in Philadelphia, Montgomery County, and Delaware County.

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1. On September 10, 2020, this court issued an order permitting plaintiff to amend his complaint to designate defendant Delaware County Department of Corrections as GEO Secure Services, LLC.

Before the court is the motion of defendants Montgomery County Department of Corrections, Julio Algarin, Corporal Baker, and Corrections Officer Colbreath ("the MontCo defendants") and the motion of defendant GEO Secure Services, LLC ("the DelCo defendant") to dismiss plaintiff's complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

I.

When considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), the court must accept as true all well-pleaded factual allegations in the complaint and draw all reasonable inferences in the light most favorable to the plaintiff. See Phillips v. Cty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008); Umland v. PLANCO Fin. Servs., Inc., 542 F.3d 59, 64 (3d Cir. 2008). We must then determine whether the pleading at issue "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

II.

The MontCo defendants move to dismiss plaintiff's claims brought under the Eighth Amendment. The Eighth Amendment only applies after there has been a formal adjudication following due process of the law and does not apply to pre-trial

detainees. See Natale v. Camden Cty. Corr. Facility, 318 F.3d 575, 581 (3d Cir. 2003). Rather, the due process clause of the Fourteenth Amendment provides protections to pre-trial detainees such as plaintiff. Id. As plaintiff in this action has brought his claims under both the Eighth Amendment and the Fourteenth Amendment, we will allow this matter to proceed as pleaded under the Fourteenth Amendment. All claims under the Eighth Amendment will be dismissed.

In addition, the MontCo defendants explain in their motion to dismiss that plaintiff has incorrectly sued the Montgomery County Department of Corrections which is not a legal entity with the capacity to be sued. However, the MontCo defendants agree to the substitution of the County of Montgomery as the proper legal entity rather than the Montgomery County Department of Corrections. Plaintiff likewise agrees to this substitution in his opposition to the MontCo defendants' motion to dismiss. As such, this court will dismiss the Montgomery County Department of Corrections as a defendant, and the County of Montgomery will be substituted as a named defendant in its stead.

The MontCo and DelCo defendants raise additional arguments that plaintiff has failed to state claims for relief against them. The court disagrees. Plaintiff has pleaded sufficient factual allegations in the complaint to withstand a

motion to dismiss and allow discovery to proceed. See Spruill v. Gillis, 372 F.3d 218 (3d Cir. 2004); Durmer v. O'Carroll, 991 F.2d 64 (3d Cir. 1993). The court, of course, expresses no opinion as to whether plaintiff can succeed on the merits.

The motion of the MontCo defendants to dismiss claims under the Eighth Amendment will be granted. The motion to dismiss the Montgomery County Department of Corrections will also be granted, and the County of Montgomery will be substituted as a defendant in its place. The motions to dismiss will otherwise be denied.<sup>2</sup>

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2. GEO Secure Services, LLC does not move to dismiss plaintiff's Eighth Amendment claims.